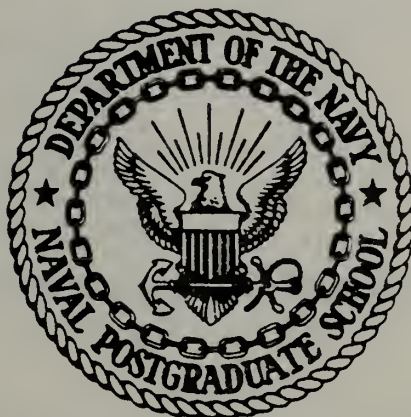


FACTORS IN NEGOTIATING OVERSEAS

Daniel William Allen

NAVAL POSTGRADUATE SCHOOL

Monterey, California



THESIS

FACTORS IN NEGOTIATING OVERSEAS

by

Daniel William Allen, Jr.

September 1979

Thesis Advisor:

David Burt

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Factors in Negotiating Overseas

by

Daniel William Allen, Jr.
Lieutenant Commander, Supply Corps, U.S. Navy
B.A., Cornell University, 1966

Submitted in partial fulfillment of the
requirements for the degree of

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ABSTRACT

The Department of Defense has been expanding the volume of foreign purchases in compliance with directives intended to achieve our national goals regarding NATO Rationalization, Standardization, and Interoperability (RSI). Implementation of this "two-way street" policy entails extensive negotiations at the governmental level in formulating the Memoranda of Understanding associated with a given transaction. Also, there have been increases in the volume of direct purchase transactions requiring negotiation between the U.S. Government and foreign private firms. The purpose of this study is to identify those factors which may affect the negotiation process with foreign firms and foreign government officials. Cultural differences which might influence negotiations are also reviewed. Most findings and conclusions are based upon personal interviews with U.S. negotiators from both the public and private sectors who have had extensive experience in negotiating overseas. The study concludes with some recommendations to help the U.S. Department of Defense contract negotiator prepare for negotiations overseas.

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I. INTRODUCTION

A. GENERAL

The classical theory of international trade rests firmly on the premise of mutual comparative advantage, i.e., that both nations will benefit after an exchange takes places. Benefits accrue because one nation enjoys an advantage in producing something which the other nation needs. Historically, various forms of mercantilism, isolationism and nationalism have resulted in significant barriers to free trade. Many of these trade barriers developed during the last two hundred years as nations experienced varying degrees of industrial revolution. [1:163-196] While quotas, tariffs and other "beggar-thy-neighbor" policies have greatly inhibited the volume of world trade, various international trade agreements (e.g., European Common Market) and a quantum increase in consumer demand for products from foreign suppliers have resulted in a tremendous growth in world trade. A quick tour through a large American department store will clearly illustrate this growth as one finds a great variety of high quality electronics items made in Japan and Holland, clothing made in Korea, cameras from Germany, shoes from Italy, English tweeds, French perfume, etc. The purchase of consumer goods from foreign producers is vitally important in today's marketplace.

Governmental agencies such as the U.S. Department of Defense (DOD) have moved rather cautiously into this world marketplace. For many years it has been assumed that only domestic firms possessed the technical expertise to manufacture the complex weapon systems considered vital to U.S. defense. Consequently, the role of the DOD in the international marketplace essentially has been limited to exporting, particularly as a sort of catalyst in the Foreign Military Sales (FMS) arena. As the volume of FMS dollars continued to grow, foreign governments became more and more concerned about the one way flow in this trading process.

President Carter recognized this concern and the political implications of the DOD propensity to export but reluctance to import. It was at this point that he addressed the NATO leaders at the May, 1977 Summit Meeting in London. The President stated in part:

As we strengthen our forces, we should also improve cooperation in development, production, and procurement of alliance defense equipment. The alliance should not be weakened militarily by waste and overlapping. Nor should it be weakened politically by disputes over where to buy defense equipment.

. . . We must make a major effort--to eliminate waste and duplication between national programs; to provide each of our countries an opportunity to develop , produce and sell competitive defense equipment; to maintain technological excellence in all allied combat forces.

. . . We are eager to join with you in trying to identify opportunities for joint development of new equipment and for increased licensing or direct purchase of equipment that has already been developed. [2:6]

The DOD reinforced the President's policy regarding joint development and direct purchasing from our NATO allies by providing guidance and goals to achieve Rationalization, Standardization, and Interoperability (RSI) in new acquisitions. [3:1-2]

The impact of this policy guidance is very clear as many contract negotiators have begun to realize. Obviously, the contract negotiator involved in Weapon Systems Acquisition within DOD now has much broader horizons in seeking out new sources of supply from overseas for the many NATO systems and subsystems. Those contract negotiators who currently handle subcontracts for the major DOD prime contractors also have been affected by this policy as they are now obliged to solicit proposals from foreign firms under various international programs. Even the DOD field purchasing offices are affected because foreign made systems require logistics support leading to the acquisition of many foreign made parts.

For many American contract negotiators, the acquisition process in dealing with foreign suppliers will seem mysterious and cumbersome simply because of differences in the business philosophies and cultural backgrounds of the two parties. A vital ingredient and potential headache within the acquisition process is negotiation. As Gerard Nierenberg so aptly stated:

We must negotiate so that our opposer will reveal himself to us. We seek to recognize his needs, his motives, and his desires. We accomplish this by asking questions, by noting

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his mannerisms and context of speech, by observing his telltale gestures and other nonverbal communication, by allowing for emotional stresses and cultural differences. (4:146)

Presumably, an effective contract negotiator in the international acquisition arena requires some insight into the special factors or nuances which might be encountered within this environment. And that is what this study is all about.

B. NEGOTIATION

The concept of negotiation is probably as old as time itself. In its broadest sense, negotiation is a process which occurs whenever two or more people exchange ideas with the intention of changing their relationship. [4:2] The process might be as simple as the case in which two children are trading baseball cards, as fundamental as the case of a young sailor bargaining for a night's entertainment in Wanchai (Hong Kong), or as complex as the case in which two major world powers are considering mutual limitations in strategic armaments.

Sales negotiations involve a buyer and seller who generally attempt to change their relationship by agreeing to trade money for some product or service. As society advances technologically, products become much more complex and marketing efforts often extend beyond national boundaries. At this point the relative skill of the individuals conducting the negotiations becomes a vital factor in formulating the terms of the sales agreement or contract.

C. SCOPE OF RESEARCH

The primary purpose of this research paper is to identify those factors which affect international contract negotiations. Because of national differences in culture, business philosophy, and governmental relationships with private industry, negotiations between individuals from different nations tend to be more complex than negotiations (for a similar product) between two individuals from the same country. While this contention is based somewhat on intuition, casual observation of the many special problems associated with international purchasing in general and with various NATO rationalization, standardization, and interoperability (RSI) programs in particular would strongly support this presumption.

After confirming that differences do exist, an attempt will be made to identify them and to distinguish which nuances apply to which NATO countries. Basic negotiation concepts and strategies will not be discussed in detail as it is presumed that the reader already will have had some exposure to the classical negotiation theories such as those of Nierenberg, McDonald, and Karrass. [4,5,6] Also, it is presumed that the reader will have had some purchasing or marketing experience in negotiating contracts with domestic firms.

D. METHODOLOGY

This research was based on two primary methods: literature search and personal interviews. The literature search began

with a review of various government documents and research papers dealing with international programs. In this regard it was noted that during the past two decades there has been considerable European experience in collaborative acquisitions. The primary participants have been England, France, Germany, and Holland who, in the aggregate, have accounted for more than 75% of non-U.S. NATO defense expenditures. [7:2] Additional literature was then reviewed to identify significant historical events in the cultural development of Germany, England, France, and Holland. Finally, the literature search uncovered several texts dealing with non-verbal communications which relate to various national characteristics.

Personal interviews were conducted with government personnel involved with international programs and with representatives from the private sector who were involved in marketing U.S. products overseas or purchasing foreign products from European suppliers. While most of these interviews were conducted in person in a relatively unstructured environment lasting one to three hours, many contacts of shorter duration were made by telephone.

E. THESIS STRUCTURE

Beyond this introduction, the research has been broken down into four sections. Chapter II deals with the Memorandum of Understanding (MOU), which is a form of international agreement between two or more governments. Usually a separate MOU is negotiated for each RSI or cooperative research and development program. While the level of detail varies from

program to program, the MOU generally provides a framework from which program objectives, specific obligations, and legal doctrines are developed. [8:44] Chapter III concerns negotiation factors in overseas purchasing within the private sector. Chapters II and III are provided to establish a general framework from which specific differences can be developed. Chapter IV continues to identify negotiation factors and cultural differences on an individual country basis. Specific examples are also reviewed to illustrate these differences in negotiating overseas. While much of this research deals with techniques in purchasing from foreign firms, some of the negotiation factors have been derived from analysis of marketing techniques employed by U.S. firms selling to foreign firms. Finally, Chapter V integrates these findings and offers various conclusions and recommendations in an attempt to assist a U.S. contract negotiator in preparing for negotiations with German, French, English and Dutch suppliers.

II. THE MEMORANDUM OF UNDERSTANDING

A. PARTICIPANTS

Since the MOU is negotiated entirely within the public sector of each participant, it is useful to establish whether or not differences exist between intragovernmental and intergovernmental negotiations. To what extent are all bureaucrats basically the same? This question was presented to all U.S. government employees interviewed and the consensus of opinion definitely supported the contention that special factors must be considered in negotiating with foreign government personnel. Since national goals are not uniform and since the structure of each bureaucracy varies from country to country, the motivation of the negotiator will tend to reflect these differences.

Although some contact was made with U.S. State Department personnel who are involved in a wide range of international agreements, most of the public sector people interviewed are employed by the Department of Defense and have been active participants in negotiating defense related agreements with personnel from various foreign ministries of defense.

B. CONTENT OF MOU

MOU negotiations are quite complex and the resultant document covers many topics. Before considering special negotiation factors, it is necessary to recognize the issues being negotiated. A cooperative development program will be considered first.

Since many related agreements impact on the program to be covered by the MOU, these existing agreements must be identified and referenced in the MOU. Examples of such agreements include:

- (1) Patent agreements
- (2) Security agreements
- (3) Data exchange agreements
- (4) Reciprocal audit agreements
- (5) General NATO agreements
- (6) Previous research and development agreements

Any laws or regulations which might affect the proposed program should be incorporated into the MOU. For example, the treatment of employee inventions, import and export regulations, personnel regulations, and statutory inspection requirements should be considered.

Special terms which apply to the program must be defined. In some cases previously developed NATO glossaries can be used but often the negotiating teams must develop a special glossary for each specific program. This process sometimes leads to special problems which will be discussed in Section C.

Because of differences in perceived threat or doctrine, it is essential to clearly identify the program objectives in the MOU. The objectives should be realistic since subsequent modification usually entails a lengthy review process with formal amendment executed at the same level as that of

the original MOU. Implementation of the objectives requires establishment of a management organization whose duties are clearly defined. The MOU usually provides for some method of resolving disputes between different factions within these management organizations. Negotiating this procedure requires a great deal of tactful diplomacy as many emotional issues arise. However, failure to establish an efficient and effective system to resolve disputes will doom the entire program eventually.

Allocation of program costs and specific obligations of the participants should be delineated. Specific areas normally covered in this section of the MOU include:

- (1) Cost contributions, both total and annual
- (2) Work tasks expressed in terms of manpower
- (3) Termination liability
- (4) Offset purchase agreements
- (5) Currency exchange rate determination
- (6) Funding mechanics
- (7) Administrative support responsibilities
- (8) Preparation and language of annual reports

As a cooperative program progresses, much technical data will be generated. Thus, the MOU must specify the rights of the participants regarding use and disclosure of this data. Obviously, if the technical information is not protected from unauthorized use by non-participants, the desire to participate will diminish and fewer countries will be left to share the development costs. Background rights generated at private

expense prior to a contract award should be identified by developing an initial status report prior to initiation of the cooperative effort. However, because of differences in the way certain foreign countries view background rights, the MOU must provide a uniform method of treatment. Licensing rights should also be identified since royalty entitlements vary from country to country.

In any major program there is a real need for personnel exchanges and visits from country to country. In this regard it is the MOU that normally addresses the extent to which travel will be authorized and it often places specific restrictions on the visitors. These restrictions may involve data disclosure limitations or even the extent or freedom of movement at the program site. Generally, funding responsibilities and liabilities for injuries are also identified in this section of the MOU.

If the project is to be classified, then the MOU must identify the level of classification and the procedures for handling, storing, and transmitting the classified material.

The second type of MOU deals with purchases to be made by the U.S. Government from foreign firms either directly or via the foreign government. In addition to the many aspects of the codevelopment MOU previously discussed, the direct purchase MOU includes guidelines for contract terms and conditions. Some other aspects of the direct purchase MOU include additional definitions, specifications, acceptance,

cost reimbursements and claims liability. The additional terms which need to be defined include:

- (1) Related supplies (associated weapons, test equipment, spare parts, and technical publications),
- (2) Engineering Change Proposal (ECP) (method of incorporating modifications into the weapon system),
- (3) Contract (identifying the principal parties).
[8:60]

With regard to the specifications, the MOU is generally quite vague. However, citing of the baseline configuration specifications in the MOU does help to accomplish the RSI objective since subsequent ECP's could then be required to maintain interchangeability with the baseline configuration. The acceptance procedures specified in the MOU normally reflect a compromise between the standard domestic rules and the foreign government's normal procedures. Cost reimbursements are often discussed in much greater detail in a direct purchase MOU, since certain items such as Research and Development costs require special treatment as to the rate and basis for recoupment. Liability for third party claims is also covered in this type of MOU.

C. MOU NEGOTIATION FACTORS

While it is important to understand the peculiar nature and special nuances relating to MOU negotiations, it is, perhaps, even more significant to recognize the danger of generalizations regarding negotiation techniques. The following

comments about MOU negotiations are based on actual situations experienced by the people who were interviewed. However, each negotiation session is truly unique as some nuances are based on individual personalities or even on the mood and interaction of the negotiators during a particular session. Thus, the effective negotiator must be perceptive enough to recognize which of these situations seem to apply and then be flexible enough to capitalize on them.

In order to make any meaningful progress in negotiating an MOU, both negotiating teams must first develop confidence in one another. Contrary to domestic negotiation scenarios in which the two sides might initially vie for power and control over the negotiations, in MOU negotiations there seems to be a preconceived suspicion that the giant U.S. defense establishment will draw upon its immense power to steamroller its allies into meek submission. Rather than vie for power with such a formidable adversary, our NATO allies tend to withdraw, maintain their suspicions, and move very slowly towards any definitive agreements. Despite the recent devaluations of the dollar relative to the European currencies, these deeply ingrained suspicions have not subsided. Overcoming this suspicion does take time but the process can be accelerated if the U.S. negotiator is scrupulously honest and makes a special effort to conduct negotiations in a frank and open manner. Having a permanent U.S. team of professional MOU negotiators is obviously an excellent means of overcoming

this initial mistrust since most of our allies already have permanent teams (or at least a permanent nucleus from which particular teams are formed). Then, once a high level of confidence has been achieved, it will not be necessary to rebuild the confidence bridge each time a new program is developed.

Eloquent language is fine for playwrights. U.S. "Federalese", while not so fine, is at least pretty well understood throughout the U.S. Federal government. Translation, however, tends to become hopelessly distorted if the original text is not short and concise. Besides the translation difficulties, the foreign negotiators will probably have a great deal of trouble understanding the "Federalese" and the suspicions mentioned earlier will not dissipate. Because the negotiators represent their sovereign governments in MOU negotiations, diplomacy requires that the resulting document be written in more than one language. The translation process is very time consuming because accuracy and elegance are sometimes mutually exclusive qualities, particularly if the English version is written in "Federalese". In trying to reach a true "meeting of the minds", the procedure entails much playback and fine tuning. Here's a typical example. The English version is translated into German by the Germans. Then the German version is translated into English by an American who is often a language scholar with no idea of what the program is all about. Finally the U.S. negotiator gets the two English

versions and attempts to resolve the differences. Considerable effort must be expended with successive rounds of translation until the two English versions are almost identical. The astute U.S. negotiator should soon recognize this whole process is of little value if there is a clear understanding that only one language can be the "original" document. Since negotiations are usually conducted in English, that language is generally accepted for the "original" document. And since most countries agree that the original document takes precedence in resolving subsequent disputes, accuracy in translation becomes much less critical.

Because of the lengthy and complex negotiation process in developing an MOU, it is very important to document the many sub-agreements at the time the issues are discussed. In this regard, accurate and timely minutes are essential and they should be formally agreed upon (i.e., signed) prior to adjournment of each session. Agreement as to the wording of the minutes normally requires much discussion and often takes several hours. But the additional effort expended during each session should help to keep negotiations moving along. Without formal minutes, there is a tendency to continually reopen discussion on points which have already been agreed upon. Although the host nation might automatically assume the responsibility for writing the minutes, active participation by the U.S. team in the wording of the minutes is generally beneficial, particularly if the original minutes

are written in English. Thus, someone on the U.S. team should be identified as the minutes writer and that individual should not be assigned any other significant duties which might be distracting. Expert stenographic talent is not required. A logical synopsis of key statements, positions, agreements, and disagreements is much more valuable than a lengthy transcript which has captured every word spoken at the negotiating table.

Before considering more specific differences in negotiating MOU's with particular NATO countries, a final point is offered concerning MOU negotiations in general. The United States is a relatively recent entrant into the NATO RSI arena. Since many European negotiators have been in this business for the past 30 years, the smart U.S. negotiator will keep an open mind and will never underestimate the skill of his European counterpart.

D. SUMMARY

The MOU provides a basis for development of a business relationship between two or more governments. Any agreements written into the MOU concerning direct purchasing procedures will become significant factors in negotiating contracts directly with foreign suppliers. Since many U.S. firms have had a great deal of experience in negotiating with European suppliers, knowledge of the private sector perception of negotiation factors in dealing with the Europeans can be helpful to the U.S. government contract negotiator in preparing

for negotiations in Europe. This experience is discussed
in the next chapter.

III. NEGOTIATION FACTORS WITHIN THE PRIVATE SECTOR

A. COST EVALUATION

When purchasing from European suppliers, U.S. firms must carefully evaluate various types of costs which usually are not encountered in dealing with domestic suppliers. Evaluation is necessary whenever competition exists so that domestic and foreign offers can be compared on a "true cost" basis. In a non-competitive environment this evaluation is a necessary step in preparing for negotiations since many of these costs can be influenced by establishing special provisions in the contract.

The first problem concerns the treatment of item cost. In this case the difficulty is a lack of information, since most European firms are quite reluctant to provide a detailed cost breakdown. The European concept of a fair and reasonable price is tied directly to the marketplace, however imperfect it may be. "Whatever the market will bear" is often the sole basis for a European firm's pricing policy. Thus, the U.S. negotiator must perform an independent price analysis based on domestic budgetary estimates. The most effective tactic in dealing with this situation is to generate competition and not worry about the cost breakdown at all. In mandatory sole source situations such as directed purchases to specific sources, the best approach seems to be an appeal for

a price reduction based on the purchaser's budgetary limitations (both real and imagined).

Another type of cost which is often partially hidden involves special handling, storage, taxes, and transportation. Even in a purchase which specifies FOB Destination, some of these costs still must be considered. For example, the movement of the material should be monitored to ensure eventual receipt. This involves additional transportation specialists and expeditors who must make long distance telephone calls or take trips for the major purchases. Since most European firms operate on an "ex works" or "ex dock" (FOB Origin) basis, these handling charges, taxes, and various permit fees become a direct cost for the purchaser. In fact, there are many European trading terms such as "FAS (Free Alongside Ship) Vessel" and "C.I.F. (Cost, insurance, freight) Destination" which are not commonly used in the United States. These terms are clearly defined in a publication called INCOTERMS, which is available from the National Committee of the International Commerce Commission located in New York City.

Currency exchange arrangements can greatly affect the bottom line cost to the purchaser. Negotiations are normally undertaken to determine which currency will be used for pricing the contract, the timing of the currency exchange, and the basis for rate determination. Historically although the buyer could generally insist on using his own currency

for contract pricing, the recent fall of the U.S. dollar relative to most European currencies has caused many European suppliers to demand exchange rate guarantees. In effect the contract is then priced in the supplier's currency and the buyer must either set up a foreign currency fund pool or else risk an automatic price change if the actual foreign currency exchange rate should fluctuate. In some cases a skillful negotiator can develop a pricing procedure which effectively shifts a part of the risk of exchange rate fluctuation to the supplier. The mechanism to accomplish this is simply a share formula or else a limit on the degree of fluctuation when computing the amount of foreign currency owed to the supplier.

In contrast with the private sector, a study of DOD policies regarding the use of foreign currency in pricing contracts with foreign suppliers was undertaken by the Comptroller General of the United States who then strongly recommended that DOD adopt a uniform policy requiring contracting officers to price these contracts in the foreign currency. A less preferable but acceptable alternative to this recommendation would be to pay foreign contracts in dollars subject to price adjustments to compensate for significant exchange rate fluctuations during the life of the contract. [9:19-20]

Unfortunately, foreign exchange pricing arrangements are often further complicated by the timing of payment. European firms tend to have cash flow problems and must frequently

assign contract payments to lending institutions. Advance payments obviate the need to make these assignments and are, therefore, very desirable to the seller. In fact, many European suppliers will make significant price concessions if advanced payments are to be made. If the exchange rate and timing of payment factors are carefully tied together, the result can be the elimination of exchange rate fluctuation problems and a price reduction in consideration for the advance payments.

B. TIME CONSIDERATIONS

In general, it takes longer to deal with foreign suppliers than with domestic suppliers. Since time is often a significant factor in negotiating any contract, identification of the specific reasons which bring about protracted lead times might help the contract negotiator minimize these delays. The obvious relationship between time and distance would, in itself, suggest longer lead times from foreign suppliers. However, distance is not the only cause for longer lead times. Lack of familiarity with U.S. specifications will generally result in slower response times to U.S. solicitations. The foreign firm must expend more effort to ensure its offer meets the U.S. requirements. In many cases the European firms take longer to respond simply because of their traditional operating procedures under which a reasonable time period is apt to be quite a bit longer than that which would be considered reasonable in the United States.

The negotiation process itself is also significantly longer if the foreign firm has not had extensive exposure to U.S. business practices and specifications. Many standard operating procedures identified in the buyer's regular "boiler plate" clauses must be thoroughly discussed with European suppliers. American business practices regarding payment, warranties, liquidated damages also require much discussion as the treatment of these factors varies from country to country. Normally, the U.S. negotiator must establish the extent to which the foreign supplier has previously complied with applicable U.S. specifications. This requires a detailed step-by-step review of the specifications. Sometimes the foreign supplier's standard specification meets or exceeds the U.S. requirement. However, a very detailed review and comparison is required in order to ascertain the adequacy of the foreign specification. [10:177]

C. OTHER TERMS AND CONDITIONS

Some other factors which might arise during negotiations with foreign suppliers include, letter of credit procedures, default provisions, cancellation limitations, place of jurisdiction, and the procedures for resolving disputes. The letter of credit mechanism is quite complex and involves several parties and as many as thirteen steps to complete a single transaction. Specific letter of credit terms and conditions should be negotiated and incorporated into the basic contract in order to preclude misunderstandings during contract performance. Default clauses often have release

provisions in case of a force majeure. Since the determination of what constitutes a force majeure varies from country to country, this clause must be carefully worded to protect the purchaser. Cancellation procedures are especially difficult to negotiate with European suppliers because of the supplier's inability to manipulate the size of his labor force. The issue of jurisdiction is somewhat easier to resolve in dealing with foreign private firms than with foreign government agencies. Since the buyer is paying the bill and thus, providing the money in this transaction, the buyer can usually persuade the seller that legal jurisdiction should remain in the state or country in which the buyer is incorporated. Sometimes, a trade-off takes place because the seller is very concerned about jurisdiction with regard to the handling of disputes. Usually a recognized international arbitration board is designated to resolve disputes. Negotiation of these points is quite complex and much interface with legal counsel is generally needed to avoid an unfavorable arrangement.

Trade-offs are commonplace in almost all negotiations, however, in dealing with foreign suppliers, the quid pro quo concept is especially important. In some countries, the "winner" is thought to be the negotiator who gains the most concessions, regardless of the importance of those concessions. Since the foreign negotiator treats all concessions as equal, the U.S. negotiator should ensure that many issues are introduced. Then concessions can be offered or exchanged in an

attempt to win the big points and yield on the little points. For example, a French supplier might insist that the specification be modified to provide that "MADE IN FRANCE" be etched into the item's casing. If the American negotiator is concerned about the delivery schedule, a very painful liquidated damages clause could be presented in exchange for this minor (but emotional) specification change. When used effectively, both sides feel as though they have won at the negotiation table. [10: 175] One must always look for emotional issues which might yield valuable concessions on substantive issues. Of course, the skilled U.S. negotiator must fully understand the foreign business practices and cultural influences on negotiations in order to recognize which issues will yield the best concessions. <

D. SUMMARY

Many American firms have turned to foreign sources to enjoy cost savings and derive some benefits from foreign technology. However, cost determination requires careful analysis and the additional administrative and production leadtimes must be considered. Also, dealing with European firms can require a compromise concerning legal jurisdiction for arbitration for disputes and cancellation procedures. Since emphasis on these factors and general negotiation techniques vary from country to country, it is important to recognize the differences between German, French, British, and Dutch negotiators. This is the subject of Chapter IV.

IV. DIFFERENCES BETWEEN COUNTRIES

A. INTRODUCTION

1. Public Versus Private Sector

Before discussing the way in which specific cultural differences affect the negotiation process, some distinction between public and private sector negotiations is necessary. The primary distinction rests on the public sector concept of sovereign equality versus the private sector's economic marketplace orientation. Thus, public sector negotiations cannot rest on a single sovereign's framework of rules and regulations, but instead will always involve some mixture or blending of two sets of rules. In public sector negotiations, political considerations are paramount, while in the private sector, economic considerations prevail. Thus, public sector negotiations involve many more emotional issues and protocol becomes very important. For example, most of the private sector negotiators had very few language problems in dealing with European firms because all negotiations were conducted in English and the contract was written in English. Although the public sector negotiations were frequently conducted in English, a great deal of time was spent preparing and altering translations in an attempt to produce a bi-lingual document.

2. General Comments

There are a few points which seem to apply to negotiations with all European countries. For example, it is

important to avoid embarrassing any members of the foreign negotiating team. While this might seem obvious, it must be remembered that it is very easy to embarrass someone without realizing it, particularly if the foreign customs are not fully understood. To minimize misunderstandings, the U.S. negotiator should always use clear and simple language and repeat important points often, using slightly different phraseology each time. [11:XV-2] Frequent caucuses are especially useful in negotiating overseas as the caucuses help to relieve tension. [12:30] Finally, some appreciation for the way Europeans tend to view Americans could be helpful in overcoming a stereotyped image. A recent study in public opinion revealed the following perceptions of Americans by Europeans.

<u>Nationality</u>	<u>Adjectives most frequently used to describe Americans</u>		
British	Progressive	Conceited	Generous
French	Practical	Progressive	Domineering
German	Progressive	Generous	Practical
Dutch	Practical	Progressive	Hardworking [13:51]

B. GERMANY

In reviewing several detailed studies of German culture and heritage, several general observations regarding German characteristics emerge. Germans project an air of formality among themselves as well as among foreigners. For example, there is apt to be much more handshaking than most Americans are accustomed to. Also, the American habit of gum chewing

still horrifies the older Germans even though the habit is growing in popularity among the youth in Germany. [14:50] With regard to youth, it should be noted that the tendency towards "Americanization" is twice as strong among the 16 to 29 year olds than among the 45 to 59 year olds. However, only about 65% of the younger group indicated contentment in adopting American characteristics and mannerisms. [15:185]

Even the German language reflects this formality in the distinction between Du (intimate form of "you" or "thou") and Sie (the formal version). Among white collar business associates, the Sie form predominates. With only a rudimentary knowledge of German, one can quickly detect the level of formality between two individuals conversing in German. A U.S. negotiator who is fluent in German will reap other benefits as the Germans tend to caucus openly in German at the negotiating table because they tend to assume that Americans cannot speak German. Even if they know the American does speak German, this open caucusing habit is difficult to break and much can be learned if the discussions can be understood.

Spatial relationships are somewhat different in Germany. While the "bubble of privacy" for an American is generally about two or three feet, the German often needs a whole room for his "protective bubble". [16:4] Thus, while a private conversation held several feet away from an American (third party) would not upset the third party, a German third party might become extremely upset because his privacy zone

would have been invaded, even though he was excluded from the conversation. This concept of "privacy bubble" may seem inconsistent with the practice of the open caucus and, in fact, might not apply directly at the negotiation table. Nevertheless, the U.S. negotiator should be sensitive to this "invasion of privacy" in other social interactions with his German counterparts.

German humor is almost non-existent except for regional jokes and puns. The quick flash American smile is generally considered to be an insincere gesture. [14:62] At the negotiation table, expect very little levity. The Germans tend to speak English slowly and strongly without injecting any slang. Patience is, therefore, a necessity in negotiating with the Germans.

Because of the stratification of the German education system and the close relationship between education level, employment opportunities, and social status, the Germans are very conscious of educational credentials. The title "Dr." commands instant respect whether or not the particular "Dr." makes any sense at all in defending a position at the negotiating table. Some implications are fairly obvious. A Ph.D expert will probably be a great deal more persuasive than a functional expert who might have had many years experience in working with the system being purchased.

A "sense of order" seems to be extremely important to the Germans. In fact, the fantastic rate of economic growth

since the end of World War II is largely attributed to willingness of the German people to adhere to federal regulations which tied wages and prices to productivity. Private firms in Germany will strictly adhere to official guidance on rates and it is virtually impossible to get significant reductions at the negotiating table. Non-recurring costs, however, are much more flexible. Items such as design engineering, testing, and data preparation are likely to have excess costs built into the proposal. When digging into these cost elements, it is very easy to get lost in a sea of detail. Frequent summaries are needed in order to keep the negotiations moving. If minues are being recorded, it is wise for the U.S. team to participate in the preparation since the German version often tends to read like a novel with every detail fully described.

Establishment of an agenda is also very important when negotiating with the Germans. As they are very sensitive to limitations of authority, much pre-staffing is done with higher management levels and with legal counsel. While the flexibility of the German negotiator might appear to be very limited, at least the final approval process will be quite rapid because of all the pre-staffing. Frequent caucuses will allow the German negotiator time to get approval on any changes the U.S. negotiator has proposed. But, before a break, some agreement should be reached on the duration of the break and the topic to be discussed immediately following

the break. Otherwise, negotiations will become protracted and this delights many Germans who feel they can eventually wear down the U.S. negotiators. Another advantage of the agenda is to minimize the unavailability of experts, which is a tactic often employed by the Germans whenever they do not want to discuss an issue.

Bureaucracy and "red tape" abound in Germany. Because of their "sense of order" and high respect for authority, official documents are treated quite differently from normal business papers. In one case a U.S. negotiator was having difficulty in clearing the border inspection into Germany because of the lengthy review of his briefcase contents. To alleviate this problem, he bought a rubber stamp and marked his cover sheets "OFFICIAL NATO BUSINESS." The problem disappeared.

Some U.S. negotiators found that a short working lunch was an effective means of getting the German's attention since such a lunch is not consistent with the routine heavy noon meal. Also, these U.S. negotiators found that the period just after lunch was the best time to introduce important issues. At least one U.S. negotiator learned to handle the very difficult issues away from the formal setting of the negotiating table. Once a mutual trust had been developed, private discussions unter vier Augen (literally "under four eyes") were quite useful in resolving these difficult issues.

C. FRANCE

In contrast with the German's concern about precision with the written word, the French tend to be much more flexible and casual about contract wording. Historically, the French business philosophy did not stress growth or profit maximization. Entrepreneurs seemed more concerned that too much growth would cause the character of the business to change and would probably affect their comfortable life style. [17: 335] This conservatism resulted in a slower economic growth than that of most European neighbors. Also, the extremely nationalistic policies put forth by Charles De Gaulle did little to help France economically. Even today some U.S. negotiators have found that nationalism often tends to sidetrack the French negotiator who becomes extremely preoccupied with a single issue which sometimes is quite minor. If the U.S. negotiator can discover what this "big" point is, the quid pro quo advantage is potentially enormous.

With regard to differences in spatial concepts, the French tend to like centralized control with the boss in the middle of the group. The boss directs all activities and makes all decisions. [18:201] The idea of dividing up space equally (the American way) never seems to occur to a Frenchman and a newcomer to a group must fend for himself until he has been accepted by the group. The implications of this difference in space utilization could have some impact at the negotiating table, particularly if there are several countries involved (e.g., a multinational cooperative development

program). French reluctance to establish common (neutral) territory could inhibit progress in the opening phase of these negotiations.

This difference in spatial concepts was one of the many problems faced by a U.S. negotiator who was negotiating with the French indirectly. In this case the French were purchasing some complex target drones and related range services from the Italians who, in turn, were subcontracting a large portion of the work to an American firm. Both French and Italian negotiators were from the public sector representing NATO interests. The Italian negotiator representing the prime contractor was there as well. Initially, there were many problems with seating arrangements which arose as a result of differences in spatial concepts as well as the French reluctance to deal directly with the Italians unless the U.S. subcontractor would be a full participant. Despite the absence of privity between the U.S. subcontractor and the French, a completely three-way negotiation session ensued and the American firm became hopelessly trapped right in the middle in a sort of whip saw maneuver by the French and Italians. In this instance the reluctance of the French to deal directly with the Italians was the primary cause of the problem. However, if the American had not allowed himself to be positioned in the center of the action, he could have effectively maintained a lower profile during the negotiations. But since the U.S. negotiator had been caught in the middle, the French expected him to take control rather

than act as a natural "middleman" which was the role perceived by the American. Incidentally, the Italians seemed to enjoy having an American placed in the middle to act as a buffer between the Italian and French negotiating teams.

Status consciousness runs very high with the French. Most of the U.S. negotiators found the French to be quite insistent that the French negotiator have the same organizational status as the U.S. negotiator. Since organizational structures and titles are quite a bit more flexible in America (particularly in a matrix organization), the U.S. negotiator should find out the French negotiator's position and adjust his own title (within reason) accordingly. Another ploy sometimes used by the French when negotiating at home is to start the negotiations at a fairly low organizational level. Then successively higher levels are introduced to review the progress and to reopen negotiations when early sub-agreements appear slightly unfavorable. Because of this status consciousness, the higher levels will either try to dominate the U.S. negotiator or insist that the negotiations be elevated to a higher level on the American side. Quite simply, the moral to this story is not to start out at too low a level.

At the negotiating table the French seem to be quite secretive about their position. On the other hand, some American negotiators tend to be much more open in dealing with Europeans than with other Americans. The reason for this difference was thought to be an American feeling

that the Europeans were not familiar with U.S. business practices and needed a "helping hand". For example, the American negotiators would frequently reveal target costs at a very early stage in negotiating with Europeans but would keep their targets closely held when dealing with Americans. The rationale for this difference is that the target costs relate the scope of work and early disclosure helped to explain the U.S. requirement. Also, certain clauses such as liquidated damages required detailed explanation because the European approach to a delivery slippage was thought to be much more casual than the more serious American concern about the importance of meeting delivery commitments. This paternalistic attitude was quickly revised by those U.S. negotiators who had recognized that there is an additional cost in being open and frank if the other side is being secretive.

Negotiations with the French seem to involve quite a bit of pomp and ceremony according to most U.S. negotiators. The prevalence of charge accounts and the desire to project an image of refinement and chivalry result in more social interaction than with citizens of other European countries.

Emotionalism and theatrics also seem to be more prevalent among the French. In one case an American negotiator was in France trying to arrange for the purchase of some very expensive French heaters. Because the French firm refused to provide cost data, the American made a counteroff based on "bottom-line" budgetary considerations. When the sales director stepped in to review the progress of the negotiations,

he became incensed at the low counteroffer. He immediately raised his original offer, slammed his briefcase down on the table, and stormed out of the room. Although the American was stunned by this outburst, the sales director was quite calm and rational the following morning and the contract price was agreed upon at about the same amount as the budgetary counteroffer. Whether or not the outburst had been pure theatrics or true emotionalism, the American could never determine. But the important point here is that one must not panic in such a situation. The passage of time will generally restore the situation to a manageable level.

D. UNITED KINGDOM

The British negotiators are generally very deliberate and highly skilled. However, many of them tend to overestimate their skill. Because of this high level of self-esteem, the British like to take charge of negotiations. This desire to dominate is entirely consistent with several basic negotiation theories which suggest that the dominant side is usually the winner. Functions such as minutes recording and agenda initiation are volunteered for immediately in an attempt to control the negotiations.

On the other hand, most American negotiators felt that the British were very open and forthright once the negotiations began. The British tried very few "games" or tactics such as those frequently encountered by these American negotiators when dealing with American firms.

In multinational negotiations some American negotiators felt that the British would attempt to form a coalition on the basis of common heritage and language. Some of the European participants inferred that the British and the Americans had joined forces against the others. While these coalitions never materialized, this situation provides another example of the sensitive nature of multinational negotiations when several diverse cultural groups are represented.

Socially, the British are quite formal and reserved. Physical proximity (e.g., a neighborhood) does not imply friendship. Due to the stratified social structure, formal introductions must precede the development of a social relationship. Because of the high population density, the British tend to ignore those around them and simply withdraw into themselves whenever they wish to be alone. [16:41] Such behavior is quite acceptable in the United Kingdom, but to an American, this withdrawal in the American's presence could be misinterpreted as the "silent treatment".

Despite the fact that the British and Americans both speak English, some "translation" is necessary to account for the numerous differences in terminology, tone, and substance. For example, the expression "to table a proposal" has exactly opposite meanings in British and American. One American negotiator recalled a situation in which the American and British negotiators talked right past each other on this point for over a quarter of an hour.

As with the French, the British also have a preponderance of expense accounts. The extremely high corporate and personal income tax rates contribute to this situation as these expenses are simply corporate write-offs and they provide the perquisites needed to retain high quality managers. In any event, the "Pub lunch" or "Club lunch" are very popular in England. Apart from possible violations of the "Standards of Conduct for Government Employees", or other corporate ethical standards, the English ale is quite potent and could inhibit a negotiator's level of efficiency in the afternoon sessions. All things considered, most American negotiators indicated they enjoyed negotiations with the British.

E. NETHERLANDS

The Dutch seem to be extremely tolerant people and they sometimes describe themselves as "citizens of the World".

[19:13] They are excellent businessmen with many years of extensive trading experience. Even today, 60% of the Netherlands Gross National Product has some connection with international trade. [19:26] Most American negotiators described the Dutch as being punctual, literal, neat, and clean. At the negotiating table they are rather straight forward, not secretive like the French. Rather than being philosophical, the Dutch tend to be quite practical. They like to get things moving and finish the job as promptly as possible. In this regard, the relationship between the

American and Dutch negotiator seems to be less adversarial than the American and German relationship. Some American negotiators noted that the Dutch seem to really want to reach an agreement and do not require much prodding in order to make progress.

Because many Dutch are experienced traders, they are certainly not "push-overs" at the negotiating table. Most American negotiators agreed the Dutch were frequently persistent ("hard-headed") and would keep reopening discussion on any points they were not completely happy about. Still, the Dutch negotiator does tend to have more authority and flexibility than the German negotiator and, thus, negotiations tend to move along quite a bit faster. Like the Germans, the Dutch do caucus at the table (in Dutch) but do not seem to care if anyone listens to what they are talking about.

Based on the comments of the American negotiators interviewed during this study, it is clear that the U.S. government contract negotiator will face many new challenges in dealing with the Germans, French, British, and Dutch. The negotiator's degree of success in meeting these challenges depends upon his level of competence in modifying his successful domestic negotiation techniques in order to account for cultural influences on the negotiation process. As to the appropriate means of helping the negotiator achieve success, a few proposals are presented in the following chapter.

V. CONCLUSIONS AND RECOMMENDATIONS

A. ORGANIZATIONAL CONSIDERATIONS

At present there is very little effort expended within the Department of Defense to coordinate the negotiations between various DOD components and the various NATO countries. In fact, a recent Comptroller General report to the U.S. Congress recommended establishment of an independent interagency organization to provide policy and management guidance and to act as a central clearinghouse for international industrial participation programs. [20:21] The DOD country specialists are not in the acquisition community and, therefore, do not provide any real assistance to the DOD contract negotiators. Almost every American contract negotiator contacted in conjunction with this research stated that negotiating with foreign firms or foreign government agencies was quite different from domestic negotiations. Most foreign countries (in NATO) have realized there are unique considerations in negotiating with Americans, and have, therefore, established permanent teams to negotiate with Americans. Because of the broad scope of DOD operations, a single permanent team per country would probably encounter numerous difficulties in trying to figure out what the various programs entail and in keeping up with the heavy workload. However, a nucleus of negotiation specialists, to act as chief negotiators in setting up MOU's, might be

a feasible alternative. Technical support could be provided by the project office. Then, instead of having the contracting support office negotiate the MOU, that function would be accomplished by a centralized office staffed with negotiators who understand the language, customs, and business philosophy of each country with whom DOD expects to do business.

Even without a centralized office, there should be more of an attempt to keep all DOD components advised of developments in negotiating MOU's and contracts in various foreign countries.

B. PREPARATIONS FOR NEGOTIATION

Given that no major organizational changes will be forthcoming to improve DOD's ability to negotiate effectively overseas, then some means should be sought to improve the existing purchasing office's ability to conduct these negotiations. In this regard, it might be useful to hold mock negotiation sessions with a small cadre of personnel who are experts in negotiating with various foreign countries. These "murder board" sessions hopefully would permit the American contract negotiator to get some exposure to the foreign environment in which he will be negotiating.

It would be ideal if the chief negotiator could speak the foreign language. Although negotiations would still be conducted in English, since English would be the language spoken best by the majority of the participants, the chief

negotiator would be able to learn a great deal from the "table talk" during negotiations. This recommendation is not intended to suggest that the chief negotiator pretend not to understand the foreign language. On the contrary, his knowledge of the foreign language (and customs) would be a giant step forward in bridging the mutual trust gap mentioned earlier. Even though the table caucuses will be a bit less open, the habit of presuming that Americans do not understand will take a long time to break.

Based on the interviews and literature search, the following recommendations are provided to summarize some of the important aspects of preparation for negotiations overseas:

- (1) Recognize that the motivation of foreign governmental agencies and firms will probably be different from that which is found in the United States.
- (2) Recognize that the relationship and degree of control of the foreign government over the foreign firm might influence negotiations. Employment goals, collective bargaining restrictions, and profit goals may vary considerably from country to country.
- (3) Pre-staff objectives to the maximum extent possible so that anticipated compromises are approved prior to negotiations.
- (4) Very "thorny" issues should be deferred and then reintroduced after enough earlier agreements set the stage for easier resolution.
- (5) Besides these special aspects, all normal negotiation preparations (e.g., strategy and tactics) should be carefully thought out well in advance of negotiations.

C. FUTURE RESEARCH

The use of mock negotiations (in lieu of a permanent negotiating team) has been suggested as a means of helping the American contract negotiator prepare for and handle the many factors discussed in this study. Unfortunately, the efficacy of mock negotiations for this purpose has not been studied. Clearly, it merits further consideration if only for financial reasons (i.e., to save money at the negotiation tables).

In looking briefly at the business philosophies, cultures, and negotiation techniques of Germany, France, the United Kingdom, and the Netherlands, it became evident that each country really deserves a separate in-depth study. Such a study should include an analysis of several actual projects which required extensive negotiations.

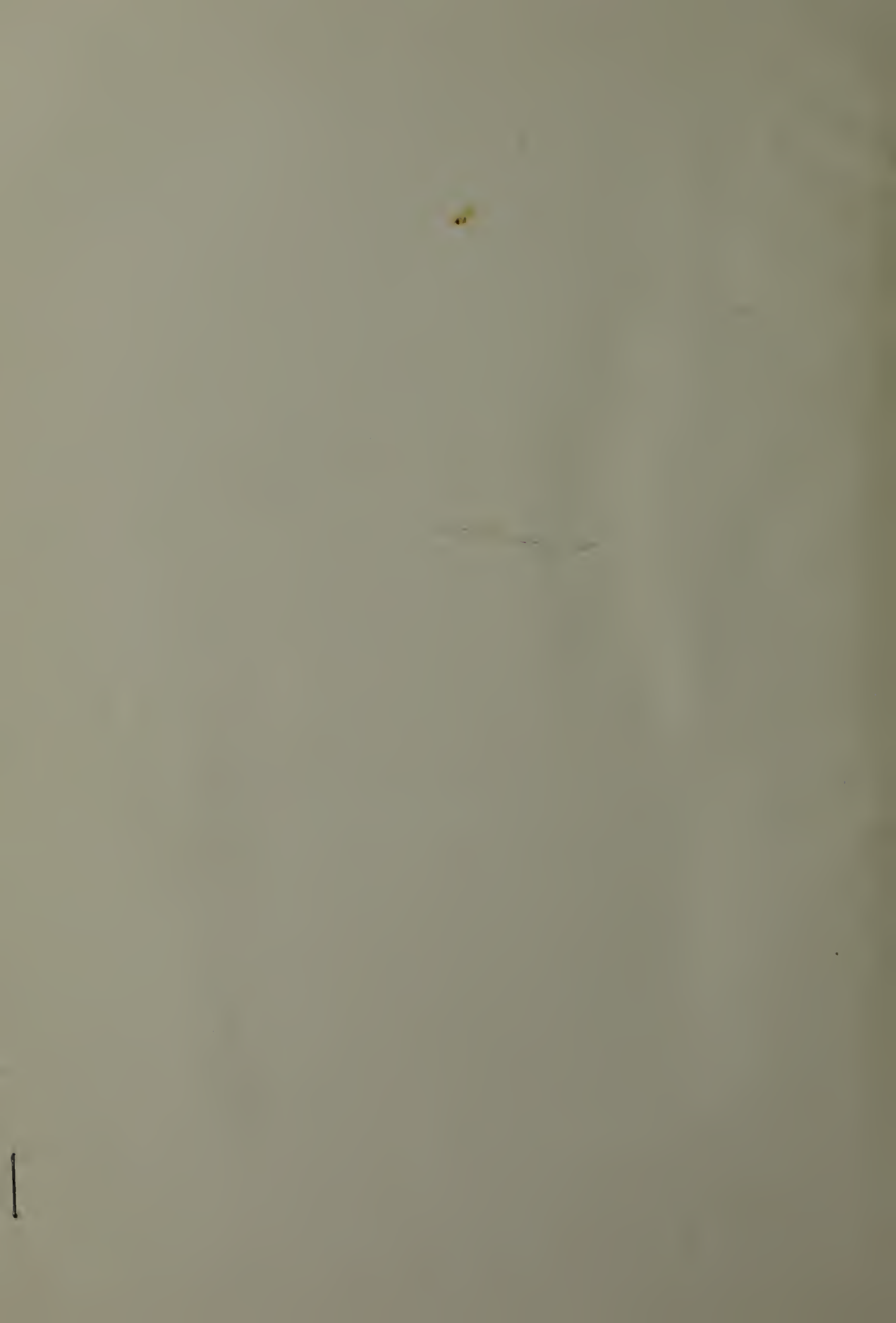
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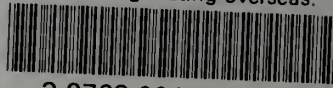
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